

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Nicholas A. Ucci,
Petitioner,

v.

L.A. County Superior Court, et al.,
Respondents.

Case No. 2:18-cv-09636-CAS-KES

ORDER DISMISSING PETITION
WITHOUT PREJUDICE AS
UNEXHAUSTED

I.

BACKGROUND

On October 17, 2018, Nicholas A. Ucci (“Petitioner”) constructively filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. (Dkt. 1 [“Petition”].) Petitioner challenges his 2014 convictions in San Diego and his 2018 convictions in Los Angeles. (*Id.* at 2, 5, 6.) The Petition raises the following grounds for relief: (1) actual innocence or false imprisonment, (2) double jeopardy, (3) conflict of interest or erroneous violation report, and (4) ineffective assistance of counsel. (*Id.* at 5-6.)

1 different courts: (a) Petitioner’s 2014 convictions in San Diego County Superior
2 Court, and (b) Petitioner’s 2018 convictions in Los Angeles County Superior Court.
3 (Dkt. 1 at 5-6.)

4 a. San Diego Convictions.

5 Petitioner was convicted in two separate cases in San Diego County: case
6 nos. SCD251271 and SCD257543. (Id. at 19.) On September 19, 2014, Petitioner
7 pled guilty in both cases. (Id.) In case no. SCD251271, Petitioner pled guilty to
8 battery with serious bodily injury in violation of California Penal Code § 243(d).
9 (Id.) In case no. SCD257543, Petitioner pled guilty to first degree burglary in
10 violation of California Penal Code §§ 459, 460. (Id.) In both cases, Petitioner was
11 sentenced to 365 days in jail and three years’ probation, with the sentences to run
12 concurrently. (Id.) Petitioner served 158 days in jail. (Id. at 23.)

13 Petitioner includes as “Exhibit A” a statement from the burglary victim
14 describing the incident as a misunderstanding concerning a vehicle Petitioner often
15 used. (Id. at 14.) It is unclear if this victim is also the victim of the battery.

16 b. Los Angeles Convictions.

17 On March 16, 2016, Petitioner’s probation was transferred to Los Angeles
18 County as case nos. BA443667 and BA443668. (Id. at 23-24.) According to an
19 October 10, 2017 report issued by the Probation Department—which Petitioner
20 disputes¹—Petitioner committed the following probation violations: (1) Petitioner
21 sustained two² misdemeanor convictions, defrauding an innkeeper in violation of
22 California Penal Code § 537(a) and rearrest of a supervised person in violation of
23 California Penal Code § 1203.2(a); (2) failure to report; and (3) failure to pay
24

25 ¹ Petitioner claims that the reports contains “multiple errors” and that he complied
26 with the instructions of his Supervision Officer. (Dkt. 1 at 22, 45.)

27 ² The report later indicates that Petitioner sustained three convictions while on
28 probation. (Dkt. 1 at 25.) The nature of this third conviction is unclear.

1 towards his financial obligations. (Id. at 24.)

2 After reviewing electronic records and statements from Petitioner's
3 Supervision Officer, the Probation Department recommended that Petitioner "be
4 found in violation of probation in both cases; that probation remain revoked and
5 sentence imposed." (Id. at 25.) Petitioner indicates that he pled nolo contendere on
6 February 1, 2018³ and was sentenced to four years in prison but expects to be
7 released in August 2019. (Id. at 36, 41.) The day after pleading nolo contendere,
8 Petitioner apparently contacted his attorneys and requested to withdraw his plea.
9 (Id. at 36.) The attorneys "refused [his] request." (Id.)

10 **2. Petitioner's Exhaustion Efforts.**

11 a. Habeas Petitions.

12 Petitioner indicates that he has filed three habeas petitions. (Id. at 36.)
13 Petitioner filed one in the San Diego County Superior Court and two in the Los
14 Angeles County Superior Court before Judge LaForteza⁴ and Judge Hunter.

15 On March 26, 2018, Petitioner filed a habeas petition in Los Angeles County
16 Superior Court before Judge LaForteza. (Id. at 46.) Petitioner describes this
17 petition as raising "voicemail proving innocence" and "errors in report" as his
18 grounds for relief. (Id. at 45.) On April 3, 2018, Judge LaForteza summarily
19 denied the petition because Petitioner did not provide proof of service on the
20 District Attorney, as required by California Penal Code § 1475. (Id. at 46.) The
21 Minute Order is included as "Exhibit H." (Id.)

22 On April 12, 2018, Petitioner filed a habeas petition in the San Diego County
23 Superior Court, contesting his San Diego convictions for case nos. SCD251271 and
24

25 ³ The California Courts database, however, shows that judgment was entered in
26 case no. BA443667 on January 9, 2018, and case no. BA443668 on February 1,
27 2018.

28 ⁴ Judge LaForteza sentenced Petitioner for the probation violation. (Dkt. 1 at 39.)

1 SCD257543. (*Id.* at 19.) Petitioner includes the Order Denying Petition for Writ of
2 Habeas Corpus as “Exhibit B”—although the order is not included in full. (*Id.* at
3 19-20.) In this petition, Petitioner claimed that the judge coerced his guilty plea
4 and that he is innocent of the burglary. (*Id.* at 19-20.) The petition was denied
5 because Petitioner did not submit any evidence to support his claims and the record
6 showed that Petitioner had signed the standard plea form. (*Id.* at 20.) Because the
7 order is not included in full, it is unclear if any other reasons supported the denial.

8 On April 15, 2018, Petitioner filed a habeas petition in the Los Angeles
9 County Superior Court before Judge Hunter, contesting his Los Angeles
10 convictions in case nos. BA443667 and BA443668. (*Id.* at 39, 41, 45.) This
11 petition is included as “Exhibit G.” (*Id.* at 40-45.) This petition claims that
12 Petitioner’s counsel was ineffective for failing to adequately investigate the alleged
13 probation violation and advising Petitioner to plead guilty despite evidence of his
14 innocence. (*Id.* at 42.) On May 4, 2018, Judge Hunter summarily denied the
15 petition because Petitioner “raise[d] issues which could have been raised on appeal,
16 but were not” and “failed to show the prejudicial effect of counsel’s errors[.]” (*Id.*)

17 Petitioner does not indicate that he has filed any habeas petitions in the
18 California Courts of Appeal or California Supreme Court raising these same claims.
19 A search of the California Appellate Courts database does not reveal that Petitioner
20 has any pending appellate cases other than his direct appeal from his Los Angeles
21 convictions for probation violations based on his nolo contendere plea.⁵

22 b. Direct Appeal.

23 Petitioner’s direct appeal from his Los Angeles convictions is currently
24 pending in the Second Appellate District, case no. B289352. (*Id.* at 2, 3.) The
25 California Appellate Courts database shows that, as of January 9, 2019, the case is
26 fully briefed, but no final disposition has been issued. Petitioner is represented by

27 ⁵ See <http://appellatecases.courtinfo.ca.gov/>.

1 Andrea Keith, bar number 244560. (*Id.* at 3.) Petitioner’s attorney submitted a
2 Wende⁶ brief and Petitioner filed supplemental briefing.

3 **3. Federal Court Proceedings.**

4 On November 30, 2018, the Court ordered Petitioner to show cause why the
5 Petition should not be dismissed without prejudice as unexhausted. (Dkt. 4.) The
6 Court indicated that the Petition appears premature because Petitioner’s direct
7 appeal is pending, and Petitioner does not appear to have fairly presented his
8 grounds for relief to the California Supreme Court. (*Id.* at 6.) Accordingly, the
9 Court instructed as follows: “In response to this Order to Show Cause, Petitioner
10 should explain when/how Petitioner believes the grounds included in his Petition
11 were exhausted in state court.” (*Id.* at 8.)

12 On January 4, 2018, the Court docketed Petitioner’s response, dated
13 December 31, 2018. (Dkt. 8.) In the response, Petitioner asserts that (1) his Los
14 Angeles convictions violate double jeopardy (*id.* at 1); (2) the report issued by the
15 Probation Department—which contributed to his Los Angeles convictions—is
16 erroneous (*id.* at 2-3); (3) Judge LaForteza and Judge Hunter erred in denying his
17 habeas petitions (*id.* at 3-4); (4) a conspiracy is underway to deprive Petitioner of
18 his constitutional rights (*id.* at 4-5); and (5) Petitioner is innocent. (*Id.* at 5-6.)
19 Petitioner does not address whether he exhausted the grounds for relief included in
20 the Petition in state court.

21 **B. Analysis.**

22 **1. Petitioner’s Claims Are Unexhausted.**

23 Based on a review of the Petition, a search of the California Courts database,
24 and Petitioner’s response to the Order to Show Cause, the Court concludes that
25 Petitioner has not fairly presented his grounds for relief to the California Supreme
26

27 ⁶ A Wende brief indicates that appellate counsel has been unable to find any non-
28 frivolous issues to argue. See People v. Wende, 25 Cal.3d 436 (1979).

1 Court. In fact, Petitioner does not claim to have filed any habeas petitions with the
2 California Courts of Appeal, and Petitioner's direct appeal of his Los Angeles
3 convictions is still pending. Thus, the Petition is premature, and this Court cannot
4 presently grant relief.

5 **2. A Rhines Stay Is Unnecessary.**

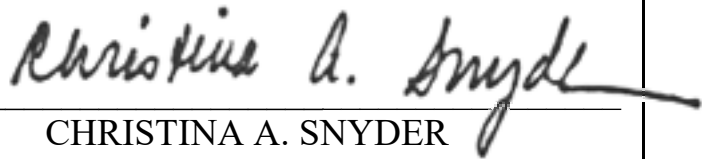
6 When certain conditions are met, a district court can exercise its discretion to
7 stay a habeas petition to allow a petitioner to exhaust his claims in state court
8 without running afoul of the one-year statute limitations period set forth in the
9 Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Rhines v.
10 Weber, 544 U.S. 269, 273-75 (2005). AEDPA's statute of limitations period
11 generally runs from "the date on which the judgment became final by the
12 conclusion of direct review or the expiration of the time for seeking such review."
13 28 U.S.C. § 2244(d)(1)(A). Because Petitioner's limitations period has not begun
14 to run for his Los Angeles convictions (as his direct appeal is pending), a Rhines
15 stay is not warranted.

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IV.
CONCLUSION

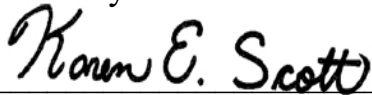
IT IS HEREBY ORDERED that, the Petition (Dkt. 1) is DISMISSED
WITHOUT PREJUDICE as unexhausted.

DATED: 1/10/2019



CHRISTINA A. SNYDER
United States District Judge

Presented by:



KAREN E. SCOTT
United States Magistrate Judge

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